IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6819 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAURASHTRA GRAM VIKASH TRUST

Versus

ADDL DEVE COMMISSIONER & ORS

Appearance:

1. Special Civil Application No. 6819 of 1993

MR H C BUCH for MR ND NANAVATI for Petitioner No. 1

MR L B DABHI AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 21/12/2004

ORAL JUDGEMENT

1. The petitioner Trust has preferred this petition in order to quash and set aside the order dated 23/12/1992 passed by respondent no.2 herein and also the order dated 01/05/1993 passed by respondent no.1 herein at Annexures-A & B to the petition.

2. The members of the petitioner Trust belong to the backward class of the society. Certain representations were submitted by them for allotting land so as to enable them to have residential accommodation as well as working facilities. Collector of Bhavnagar District, vide letter dated 31/08/1990, recommended Shihor Nagar Panchayat for granting the land in question to the petitioner Trust. Accordingly, a Resolution to that effect was passed by Shihor Nagar Panchayat in its General Meeting and the possession of the land was handed over to the petitioner Trust by the Nagar Panchayat.

3. Respondent no.2 herein initiated proceedings under Section 294 of the Gujarat Panchayats Act {Old Act} (for short, "the Act"). By issuing interim order dated 12/08/1992, the aforesaid Resolution was suspended by respondent no.2 and Notice was issued to the Nagar Panchayat. The Nagar Panchayat appeared before respondent no.2 and after hearing, the impugned order dated 23/12/1992, at Annexure-A to the petition was passed.

4. The said decision of respondent no.2, District Development Officer, was subject matter of challenge before respondent no.1, Additional Development Commissioner in revision. The said Revision Applications came to be dismissed by judgment and order dated 01/05/1993, at Annexure-B to the petition. Feeling aggrieved by the orders passed by the respondents, the petitioner has preferred this petition before this Court.

5. Mr.H C Buch learned advocate appearing for the petitioner has submitted that the suit being Regular Civil Suit No.228 of 1980 preferred by Shihor Nagar Palika was decreed in favour of the Nagar Panchayat by judgment and decree dated 06/11/1993, at Annexure-I to the petition. He has, therefore, submitted that the Nagar Panchayat is the original owner of the land in question.

6. Mr.Buch has further contended that according to Section 294(4) of the Act {Section 249(4) of the New Act}, respondent no.2, in respect of a Taluka Panchayat or Nagar Panchayat, has the same powers as Taluka Development Officer has in respect of a Gram Panchayat under Sub-sections (1), (2) & (3) subject to the modification that he has to submit a report under Subsection (3) to the State Government and the State Government is the competent authority to pass orders thereon as it may deem fit. He has, therefore, contended that under Section 249(4) of the Act {New Act}, the

D.D.O., respondent no.2 herein, can only send a report to the State Government as contemplated under Sub-section 3 and the competent authority is the State Government which can pass order in the matter. Therefore, the order passed by the D.D.O. is without jurisdiction.

7. Mr.L B Dabhi learned AGP for the respondents has submitted that the judgment rendered by the Civil Court is not with respect to the land in question. He has submitted that para 17 of the judgment passed by the Civil Court clearly establishes the location of the land in question.

8. I have heard learned counsel for the parties and have perused the relevant documents on record. Without entering into the dispute as regards the ownership of the land in question, the petition deserves to be allowed only on the ground of jurisdiction, as provided in Section 294(4) of the Act {Section 249(4) of the New Act}. The District Development Officer, respondent no.2 herein, has not followed the procedure prescribed by law and has not sent any report to the State Government which is the competent authority. Instead, the District Development Officer has himself passed the order. Hence, the order passed by the District Development Officer, respondent no.2, is required to be quashed and set aside and the subsequent order passed by respondent no.1 in revision is also required to be quashed and set aside.

9.1 In the result, the petition is allowed. The order dated 01/05/1993, at Annexure-B to the petition, passed by the Additional Development Commissioner, respondent no.1 herein, and also the order dated 23/12/1992, passed by the District Development Officer, respondent no.2 herein, are quashed and set aside. It would be open for the District Development Officer to follow procedure under Section 249 of the new Act.

9.2 However, in view of the fact that the suit has been decreed before the issuance of notice to the petitioner Trust for initiating any process under Section 249(4) of the new Act, the District Development Officer, respondent no.2 herein, is directed to reconsider the decision in view of the judgment of the Civil Court. If the decision of the Civil Court is with respect to the land in question, then the institution of proceedings under Section 249(4) {Old Act} shall not arise. But, if the decision is not with respect to the same land, then it will be open for the District Development Officer, respondent no.2 herein, to follow the procedure laid down under Section 249(4) of the Act of sending report to the

State Government, and thereafter, the appropriate authority will pass orders after hearing the petitioner. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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